

EXHIBIT "4"

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Attorneys for Plaintiffs
 DENNIS MONTGOMERY,
 BRENDA MONTGOMERY, and
 THE MONTGOMERY FAMILY TRUST

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DENNIS MONTGOMERY, an individual;
 BRENDA MONTGOMERY, an individual; and
 the MONTGOMERY FAMILY TRUST, a
 California revocable trust,

Plaintiffs,

vs.

MICHAEL J. FLYNN, an individual, and DOES
 1 through 20, inclusive,

Defendants.

Case No. BC375335

[Assigned for all purposes to the
 Honorable Edward A. Ferns, Department 69]

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 APPLICATION FOR WRIT OF
 POSSESSION; DECLARATIONS OF
 DENNIS MONTGOMERY AND TERI T.
 PHAM**

[Appendix of non-California Authorities,
 Application for Writ of Possession and
 Proposed Order filed concurrently]

Date: October 18, 2007

Time: 9:30 a.m.

Courtroom: 66

Complaint Filed: August 3, 2007

Plaintiffs Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust
 respectfully submit the following Memorandum of Points and Authorities in support of their
 Application for Writ of Possession filed concurrently herewith.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Attorney Michael J. Flynn is wrongfully withholding client files belonging to his former
 5 clients, Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust ("the
 6 Montgomery parties"), in violation of California law. Those files are presently being held at
 7 Flynn's residence in Rancho Santa Fe, California where Flynn resides and practices law. Flynn's
 8 sole purpose in retaining those files is to extort money from the Montgomery parties, which he
 9 claims he is owed under some alleged oral fee agreement. California does not allow attorneys
 10 performing functions in this state to take such abusive positions, and this Court should enter a
 11 routine turnover order and Writ of Possession under these circumstances.

12 II.

13 STATEMENT OF FACTS

14 Until August of this year, the Montgomery parties were represented in a variety of legal
 15 matters by attorney Michael J. Flynn and his colleagues in his California law firm of Flynn &
 16 Stillman. Throughout that time, Flynn led the Montgomery parties to believe that he was
 17 authorized to practice law in the State of California. Among other things, he resides in California,
 18 and he maintained an office in California where he met with the Montgomery parties. See
 19 Declaration of Dennis Montgomery ("Montgomery Decl.") at ¶3. Although he was admitted to
 20 practice *pro hac vice* before a District Court in Nevada in connection with his representation of the
 21 Montgomery parties on some litigation matters, all of his legal work was performed from his
 22 offices in California, along with other California attorneys, see Exhibit A to Declaration of Teri T.
 23 Pham ("Pham Decl."), and all of his pleadings listed a California address and telephone number.
 24 See Exhibit A to Montgomery Decl. In addition, all of his invoices were sent from an address in
 25 California, and all payments were remitted to California. See Exhibit B to Montgomery Decl.

1 Following disputes between the Montgomery parties and Flynn concerning his billing
 2 practices and handling of the various legal matters,¹ Flynn filed a Motion to Withdraw as counsel
 3 of record in the Nevada District Court.² See Exhibit C to Montgomery Decl. The Montgomery
 4 parties immediately retained new counsel and thereafter learned for the first time that Flynn was
 5 never licensed to practice law in California, and in fact, was *only* licensed to practice in the State of
 6 Massachusetts. See Montgomery Decl. at ¶7.

7 On August 1, 2007, the Montgomery parties terminated Flynn's representation of them in
 8 all matters. The Montgomery parties also demanded that Flynn return to them all client files in his
 9 possession. See Exhibit D to Montgomery Decl. Flynn refused to do so, and instead, demanded
 10 that the Montgomery parties pay him in excess of \$600,000 before he would turn over the files.
 11 See Montgomery Decl. at ¶8. The Nevada District Court subsequently granted the Motion to
 12 Withdraw subject to certain conditions requested by the United States Department of Defense ("US
 13 DoD"). See Exhibit B to Pham Decl.

14 Flynn now claims that he has a right to retain the client files under Nevada law, despite the
 15 fact that: (1) he was never licensed to practice in Nevada; (2) a number of the files pertain to
 16 matters unrelated to the Nevada litigation, including business transactions in California and
 17 investigations and proceedings in Washington DC; and (3) Flynn at all times resided in California
 18 and maintained a law firm in California with other California attorneys. Neither the law nor the
 19 facts support Flynn's position and his continued withholding and ransom of the files is extremely
 20 prejudicial to the Montgomery parties in light of the ongoing proceedings and transactions in
 21 Nevada, California and Washington DC. See Montgomery Decl. at ¶11.

22 The Montgomery parties have not yet made a specific request to any court for the return of
 23 their files, and no court has specifically addressed this issue or Flynn's claimed right to retain those

24 ¹ The Montgomery parties disputed, and continue to dispute, the legal bills provided by Flynn,
 25 which, among other things, the Montgomery parties believe are unreasonable and inaccurate, and
 26 contain inadequate descriptions in that they do not clearly state the basis of the bills, including the
 27 amount, rate, basis for calculation, or other method of calculation. The Montgomery parties have
 28 initiated arbitration proceedings against Flynn to resolve their fee dispute pursuant to California
 Business & Professions Code Sections 6200 et seq.

²

1 files. Other than the California arbitration proceeding regarding the parties' fee dispute, there is no
 2 other action pending between these parties. The Montgomery parties accordingly respectfully
 3 request that this Court order Flynn to immediately turn over all of the Montgomery client files in
 4 his possession.

5 III.

6 ARGUMENT

7 A. Flynn is Governed by California Law

8 As a preliminary matter, even though he is licensed to practice only in Massachusetts, Flynn
 9 is governed by California law. The California Rules of Professional Conduct govern both attorneys
 10 licensed by the State Bar of California *and* attorneys from other jurisdictions who engage in "the
 11 performance of lawyer functions" in California:

12 (1) As to members: These rules shall govern the activities of
 13 members in and outside this state, except as members lawfully
 14 practicing outside this state may be specifically required by a
 jurisdiction in which they are practicing to follow rules of
 professional conduct different from these rules.

15 (2) *As to lawyers from other jurisdictions who are not members:*
 16 *These rules shall also govern the activities of lawyers while*
 17 *engaged in the performance of lawyer functions in this state; but*
 nothing contained in these rules shall be deemed to authorize the
 performance of such functions by such persons in this state except as
 otherwise permitted by law.

18 California Rules of Professional Conduct, Rule 1-100(D) (emphasis added). As discussed above, at
 19 all times, Flynn maintained, and continues to maintain, an office in California where he practices
 20 with other California attorneys and performed "lawyer functions" for the Montgomery parties. All
 21 pleadings were prepared in California and served in California. See Montgomery Decl. at ¶4. All
 22 fees were billed from California and paid in California. See Montgomery Decl. at ¶5. Flynn is
 23 accordingly subject to the California Rules of Professional Conduct despite the fact that he is not,
 24 and never was, authorized to practice law in the State of California.

25 B. The Montgomery Parties are Entitled to a Writ of Possession and Routine Turnover 26 Order.

27 Pursuant to California Code of Civil Procedure § 512.010, a writ of possession may issue
 28 upon: (1) a showing of the basis of the plaintiff's claim and that the plaintiff is entitled to

possession of the property claimed; (2) a showing that the property is wrongfully detained by the defendant, of the manner in which the defendant came into possession of the property, and, according to the best knowledge, information, and belief of the plaintiff, of the reason for the detention; (3) a particular description of the property and a statement of its value; (4) a statement, according to the best knowledge, information, and belief of the plaintiff, of the location of the property and, if the property, or some part of it, is within a private place which may have to be entered to take possession, a showing that there is probable cause to believe that such property is located there; (5) a statement that the property has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure. See C.C.P. §512.010. Motions for orders compelling turnover of client files are “*routinely granted.*” Vapnek, Tuft et al., Professional Responsibility at 10:337 (The Rutter Group 2006) (emphasis added). Here, as discussed below, the Montgomery parties clearly have a right to possession of their own client files, and Flynn is wrongfully detaining those files in order to extort money from the Montgomery parties, in direct violation of California law.

The California Rules of Professional Conduct mandate that a terminated attorney must promptly release all client files at the client’s request:

Papers, Property, and Fees. A member whose employment has terminated shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. “Client papers and property” includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert’s reports, and other items reasonably necessary to the client’s representation, *whether the client has paid for them or not*

California Rule of Professional Conduct, Rule 3-700(D) (emphasis added).

Indeed, the client’s right to his files in California is so sacrosanct that California prohibits possessory retaining liens of client files, *even where a written retainer agreement between the attorney and the client creates such a consensual lien.* Academy of California Optometrists, Inc.

1 v. Superior Court, 51 Cal.App.3d 999, 1003-04 (1975).³ In that case, the Court of Appeal rejected
 2 an attorney's claim that he was entitled to retain his former client's files until receipt of payment
 3 based upon their written fee agreement, stating:

4 [The attorney] is in the untenable position of insisting upon the
 5 exercise of his contractual right to damage his client's cause (the
 6 same cause which he hitherto espoused and which generated fees to
 7 him, both disputed and undisputed), unless the client pays him the
 8 disputed fees in full and foregoes his right to honestly litigate the
 9 dispute. The client's cause, sacred as it is to a member of the legal
 10 profession, may not be so abused

11 Id. at 1005. As the Court of Appeal explained:

12 [T]he papers are of no direct benefit to [the attorney] in his quest for
 13 unpaid fees Their sole benefit to [the attorney] is the coercive
 14 effect they will have on [the client, to whom] the papers are of
 15 substantial value, both tangible and in tangible. Intangibly, they are
 16 of presumed inestimable value in the preparation and trial of the case.
 17 Tangibly, their value is two-fold. First, . . . the cost of duplicating the
 18 great quantity of material in the court clerk's file is not trivial
 19 Second, materials in [the attorney's] file which are not available in
 20 the court file may be indispensable to [the client's] ultimate success
 21 in the litigation;" thus there is an extreme potential dollar benefit to
 22 [the client] which is lost if the papers are not surrendered.

23 Id. Similarly, here, Flynn has absolutely no grounds for abusing his clients' cause. As the court in
 24 Academy of California Optometrists made clear, permitting Flynn to withhold client files here
 25 would "condone a violation of the . . . ethical duties owed by a lawyer to his client, contrary to the
 26 public policy of the state." Id. at 1006. California does not permit such behavior from those
 27 performing lawyer functions in this state, and Flynn should be ordered to immediately turn over his
 28 client files to the Montgomery parties.⁴ The Montgomery parties believe that those files are being

29 ³ Furthermore, California law even prohibits a nonpossessory "charging" lien against a future
 30 judgment unless the attorney-client contract specifies that such a lien may be placed thereon or the
 31 attorney has a judgment against the client. *Cappa v. F & K Rock & Sand, Inc.*, 203 Cal.App.3d
 32 172, 174-175 (1988); California Code of Civil Procedure 708.410. Flynn does not have an
 33 agreement with the Montgomery parties for legal fees and he does not have a judgment against the
 34 Montgomery parties so he does not even qualify for a nonpossessory charging lien, let alone a
 35 possessory retaining lien.

36 ⁴ While it is California's Rules of Professional Conduct that apply under these circumstances, even
 37 under Massachusetts' rules -- where Mr. Flynn is solely licensed -- Mr. Flynn would not be
 38 entitled to retain his clients' files. Rule 1.16(d) of the Massachusetts Rules of Professional
 39 Conduct provides: "Upon termination of representation, a lawyer shall take steps to the extent
 40 reasonably practicable to protect a client's interests, such as giving reasonable notice to the client,

(Continued...)

maintained at Flynn's residence in Santa Fe, California, see Montgomery Decl. at ¶10, and they have not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution against the property of the plaintiff.

In an effort to avoid his duties under California law, Flynn now claims that he is governed by Nevada law⁵ simply because he occasionally made court appearances in the Nevada court.⁶ California's Rule of Professional Conduct 1-100(D) makes clear, however, that Flynn is in fact governed by California's Rules of Professional Conduct, so long as he performs functions in this state, which he has. Moreover, even under California's choice of law analysis, it is clear that Flynn is governed by California's rules where he resides, maintains his office, and practices law.

California courts apply a three-step "governmental interest" analysis and will generally apply the law of the forum absent a strong governmental interest of another jurisdiction. Reich v. Purcell, 67 Cal. 2d 551, 553 (1967); Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 107-108 (2006).

Under California's three-step analysis: (1) the court examines the substantive laws of each jurisdiction to determine whether the laws differ as applied to the relevant transaction; (2) if the laws do differ, the court must determine whether a true conflict exists in that each of the relevant

(...Continued)

allowing time for employment of other counsel, *surrendering papers and property to which the client is entitled*, and refunding any advance payment of fee that has not been earned." Mass. R. Prof. Cond. 1.16(d) (emphasis added).

Rule 1.16(e) of the Massachusetts Rules of Professional Conduct further provides: "A lawyer must make available to a former client, within a reasonable time following the client's request for his or her file, the following: (1) all papers, documents, and other materials the client supplied to the lawyer . . . (2) all pleadings and other papers filed with or by the court or served by or upon any party . . . (3) all investigatory or discovery documents for which the client has paid the lawyer's out-of-pocket costs, including but not limited to medical records, photographs, tapes, disks, investigative reports, expert reports, depositions, and demonstrative evidence . . . (7) *notwithstanding anything in this paragraph (e) to the contrary, a lawyer may not refuse, on grounds of nonpayment, to make available materials in the client's file when retention would prejudice the client unfairly.*" Mass. R. Prof. Cond. 1.16(e) (emphasis added).

⁵ Nevada law recognizes an attorneys' retaining lien under certain circumstances, but must counterbalance that lien with the right of the client to possession of his files and the attorneys' obligation to avoid prejudice to his client. See In the Matter of Kaufman, 93 Nev. 452 (1977).

⁶ The Nevada District Court does not regularly schedule hearings on motions and other proceedings. All motions are determined on the papers unless otherwise ordered by the Court and out-of-state counsel may appear by telephone.

jurisdictions has an interest in having its law applied; and (3) if more than one jurisdiction has a legitimate interest the court must identify and apply the law of the state whose interest would be more impaired if its law were not applied. Id. Here, assuming a conflict does exist, it is clear that California has a greater interest in applying its rules, and its interests would be more impaired given that Flynn lives and works in California, and is misleading unwary clients to believe that he is authorized to practice in California. This is particularly true in this case given that *the files are located in California -- not Nevada*. The Court should accordingly issue the routine turnover order so as to avoid any further prejudice to the Montgomery parties.

IV.

CONCLUSION

For all of the reasons set forth herein, the Court should issue a Writ of Possession in favor of plaintiffs Dennis Montgomery, Brenda Montgomery, and the Montgomery Family Trust, and issue an order directing defendant Michael J. Flynn to turn over all client files to the plaintiffs.

Dated: September 18, 2007

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

By: 

Teri T. Pham
Attorneys for Plaintiffs
DENNIS MONTGOMERY,
BRENDA MONTGOMERY, and
THE MONTGOMERY FAMILY TRUST

DECLARATION

DECLARATION OF DENNIS MONTGOMERY

I, Dennis Montgomery, declare as follows:

1. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify thereto.

2. In January 2006, I was introduced to attorney Michael J. Flynn to represent me in connection with proceedings in Nevada.

3. Mr. Flynn led me to believe at that time and throughout the course of his representation that he was a California attorney, and I believed that I was engaging a California lawyer to represent me. Specifically, he told me he had a law firm, Flynn & Stillman, in California, and I met with him at his offices in Cardiff, California.

4. All of the pleadings and papers he filed in the Nevada courts listed a California address and telephone number. True and correct sample copies of some of those pleading captions are attached to this declaration as Exhibit A.

5. In addition, all of his invoices were sent from California, and all payments were remitted to California. True and correct redacted sample copies of Flynn & Stillman's invoices without description are attached to this declaration as Exhibit B.

6. Following disputes between Mr. Flynn and me concerning his billing practices and handling of the various legal matters, Mr. Flynn filed a Motion to Withdraw as counsel of record for me in the Nevada District Court. A true and correct copy of the Motion to Withdraw is attached to this declaration as Exhibit C.

7. I immediately thereafter retained new counsel and I learned for the first time that Mr. Flynn was never licensed to practice law in California, but was in fact *only* licensed to practice in the State of Massachusetts. At no time did Mr. Flynn ever inform me that he was not and is not licensed to practice in the State of California.

8. On August 1, 2007, I sent Mr. Flynn and his colleagues a notice of termination of representation in all matters. I also demanded that Mr. Flynn return to all of my client files in his possession. A true and correct copy of my August 1, 2007 notice is attached to this declaration as

1 Exhibit D. Mr. Flynn refused to do so, and instead, demanded that I pay him in excess of \$600,000
2 before he would turn over the files.

3 9. Mr. Flynn and the firm of Flynn & Stillman also represented me in other legal
4 matters unrelated to the lawsuits in Nevada, such as business and contract issues relating to
5 transactions in California, and legal proceedings in Washington DC.

6 10. I believe that Mr. Flynn has since separated from his former law firm and he now
7 maintains a separate practice in Rancho Santa Fe, California at the address listed on his Motion to
8 Withdraw, where he maintains all of my client files. I believe that he also resides in Rancho Santa
9 Fe, California with his fiancée, California attorney Carla DiMare, who has also appeared as an
10 attorney on my behalf.

11 11. I have suffered significant prejudice in connection with the transactions and
12 proceedings in California, Nevada, and Washington DC as a result of Mr. Flynn's refusal to turn
13 over my files to me, and I will continue to suffer prejudice unless Mr. Flynn is ordered to turn over
14 my client files to me immediately.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed this 12 day of September, 2007, in Belleveue, WA

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Dennis Montgomery

Case No. BC375335

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR WRIT OF
POSSESSION

EXHIBIT "A"

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 Eric Pulver--State Bar No. 7874
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Michael J. Flynn, admitted *pro hac vice*
 Philip H. Stillman, admitted *pro hac vice*
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Attorneys for Defendant DENNIS MONTGOMERY and Counterclaimants DENNIS MONTGOMERY and the MONTGOMERY FAMILY TRUST, a California Trust.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ETREPPID TECHNOLOGIES, INC., a
 California corporation,

Plaintiff,

vs.

DENNIS MONTGOMERY, and individual;
 THE MONTGOMERY FAMILY TRUST;
 DENNIS MONTGOMERY and BRENDA
 MONTGOMERY as Trustees of THE
 MONTGOMERY FAMILY TRUST; and
 DOES 1 THROUGH 20,

Defendants.

DENNIS MONTGOMERY, an individual;
 and MONTGOMERY FAMILY TRUST, a
 California Trust,

Counterclaimants,

vs.

eTREPPID TECHNOLOGIES, INC., a
 California corporation, aka eTreppid
 Technologies, LLC, a Nevada LLC;
 WARREN TREPP, an individual;
 DEPARTMENT OF DEFENSE of the
 UNITED STATES OF AMERICA and DOES
 1 through 10,

Counterdefendants.

FILED

2006 FEB 17 PM 4:18

RONALD A. LOGAR, JR.

BY J. Sheets
 DEPUTY

U.S. ATTORNEY, Reno, Nev.

FEB 23 2006

RECEIVED

CASE NO.: CV 06-0114

ANSWER to FIRST AMENDED COMPLAINT and
 FIRST AMENDED COUNTERCLAIM FOR:

1. DECLARATORY JUDGMENT;
2. ACCOUNTING;

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 Tel: (888) 235-4279
 Fax: (888) 235-4279
 (*Application for Admission Pro Hac Vice forthcoming*)

Attorneys for Plaintiff DENNIS MONTGOMERY, an individual
 and MONTGOMERY FAMILY TRUST,
 a California Trust

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA

DENNIS MONTGOMERY, an individual;
 and MONTGOMERY FAMILY TRUST, a
 California Trust,

Plaintiff,

vs.

eTREPPID TECHNOLOGIES, LLC, a
 Nevada Limited Liability Company;
 WARREN TREPP, an individual;
 and DOES 1 through 10,

Defendants.

CASE NO.:

COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. COPY RIGHT INFRINGEMENT BY DISTRIBUTION;
3. DECLARATORY JUDGMENT;
4. ACCOUNTING;
5. BREACH OF FIDUCIARY DUTY;
6. FRAUD;
7. BREACH OF CONTRACT;
8. MISAPPROPRIATION OF TRADE SECRETS;
9. CONVERSION.

CV-06 00056

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 (Application for Admission Pro Hac Vice)

Attorneys for Defendant DENNIS MONTGOMERY and
 Counterclaimant MONTGOMERY FAMILY TRUST, a California Trust.

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA (RENO)

DENNIS MONTGOMERY, an individual; and
 MONTGOMERY FAMILY TRUST, a
 California Trust,
 Plaintiffs,

Case No: CV-N-06-00056- BES-VPC

vs.

eTREPPID TECHNOLOGIES, INC.,
 a Nevada LLC; WARREN TREPP, an
 individual; DEPARTMENT OF DEFENSE
 of the UNITED STATES OF AMERICA
 and DOES 1 through 10,
 Defendants.

ETREPPID TECHNOLOGIES, INC., a
 Nevada Limited Liability Company,
 Plaintiffs,

Case No: CV-N-06-00145- BES-VPC

vs.

DENNIS MONTGOMERY, THE
 MONTGOMERY FAMILY TRUST, DENNIS
 MONTGOMERY AND BRENDA
 MONTGOMERY as Trustee of the Montgomery
 Family Trust, and DOES 1-20
 individual, and DOES 1 THROUGH 20,
 Defendants.

NOTICE OF MOTION AND MOTION BY DENNIS MONTGOMERY AND THE
 MONTGOMERY FAMILY TRUST TO CONSOLIDATE UNITED STATES DISTRICT
 COURT, DISTRICT OF NEVADA, CASES CV-00145-BES-VPC & CV00056-BES-VPC.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Please take notice that

1 Michael J. Flynn, Mass. State Bar No.172780
 2 P.O. Box 690, 6125 El Tordo
 3 Rancho Santa Fe, CA 92067
 4 Tel: (858) 775-7624; Fax: (858) 759-0711
 5 *Admitted Pro Hac Vice*

6 UNITED STATES DISTRICT COURT
 7 DISTRICT OF NEVADA

8 DENNIS MONTGOMERY, and the
 9 MONTGOMERY FAMILY TRUST,

10 Plaintiffs,

11 v.

12 ETREPPID TECHNOLOGIES, LLC,
 13 WARREN TREPP, and the UNITED
 14 STATES DEPARTMENT OF DEFENSE,

15 Defendants.

16 AND ALL RELATED MATTERS.

3:06-CV-00056-PMP-VPC
 BASE FILE

3:06-CV-00145-PMP-VPC

DECLARATION OF MICHAEL FLYNN
IN SUPPORT OF HIS MOTION FOR
PAYMENT OF FEES AND COSTS

17 I, Michael J. Flynn, declare:

- 18 1. I am an attorney licensed to practice in the state of Massachusetts. I have appeared pro hac
 19 vice as counsel for Dennis Montgomery, individually and as Trustee of the Montgomery
 20 Family Trust, Brenda Montgomery, as Trustee of the Montgomery Family Trust, and the
 21 Montgomery Family Trust, (hereinafter "Montgomery"), in the above captioned related
 22 cases, 3:06-cv-0056 and 3:06-cv-00145, and 3:06-cv-0263. I have personal knowledge of
 23 the facts stated herein, and if called as a witness, I could and would testify competently to
 24 them. I file this declaration in support of my Motion for Payment of Fees and Costs.
- 25 2. Except for the filing of a suit against me by the Montgomerys in Los Angeles Superior
 26 Court, filed by the attorneys on the payroll of Edra Blixseth, I would not be making this
 27 Declaration with the points and facts I am raising. But I must defend myself in that action.
 28 As recited herein, I believe that the underlying issues in that case are the same as those here
 in connection with this Motion.

1 comprehensive motions, briefings and memos on numerous matters.

2 (f) I am a lawyer with 37 years experience in complex litigation matters who has litigated
3 cases in many parts of the United States. The skill required in these cases demanded
4 virtually my full time and attention as well as the use of the skills and experience acquired
5 throughout my career.

6 (g) I forsook other opportunities to represent the Montgomerys, as did attorney DiMare.

7 (h) The customary fee charged in these matters for a lawyer of my skill and experience is
8 between \$600 and \$800 per hour for me; and \$400 to \$600 for my colleagues including Ms.
9 DiMare. I charged a discounted rate of \$400 per hour and Ms. DiMare charged a discounted
10 rate of \$300.00.

11 (i) The fee was hourly and agreed upon with oral and written promises to pay.

12 (j) There were numerous court required time limitations and constraints in which my
13 schedule was devoted to meeting said time requirements.

14 (k) I am a lawyer with 37 years experience in litigating successfully numerous high profile
15 cases. I have enjoyed a reputation as a skilled, experienced, successful lawyer of integrity
16 and honesty. I consider my trial and cross examination skills equal to that of any lawyer in
17 the United States.

18 (l) The case became extremely visible in the media, my client's media involvement was
19 initially directed by Edra Blixseth, and difficult issues arose requiring large amounts of
20 attorney time.

21 (m) The professional relationship with the client spanned a period over 18 months.

22 (n) I have achieved numerous successful results in other high profile matters.

23 21. I will provide a substantially more detailed statement relative to the points recited in the
24 foregoing paragraph after Montgomery has responded to this Motion in order to avoid
25 prejudice to Montgomery.

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27 Signed under the pains and penalties of perjury under the laws of the State of Nevada and of the
28 United States this 21st, day of August, 2007 in Rancho Santa Fe, California..

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/S/ _____

Michael J. Flynn

EXHIBIT "B"

FLYNN & STILLMAN
P.O. Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES

January 01 – April 07, 2006

Montgomery/ [REDACTED]

Invoice Submitted to:

Invoice No. 001

[REDACTED]

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED

[REDACTED]

TOTAL INVOICE

[REDACTED]

TOTAL BALANCE DUE

[REDACTED]

FLYNN & STILLMAN

P O Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES

April 07 – May 31, 2006

Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No. 002

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
[REDACTED]
[REDACTED]

TOTAL BALANCE DUE

[REDACTED]

FLYNN & STILLMAN
P O Box 690. Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
June 01 – June 30, 2006
Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No. 003

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
[REDACTED]
[REDACTED]

FLYNN & STILLMAN
P O. Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES

July 01 – July 31, 2006

Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No. 004

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
[REDACTED]
[REDACTED]

FLYNN & STILLMAN
P O Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
Through October 31, 2006
Montgomery vs. eTrepid Technologies

Invoice Submitted to:

Invoice No. 006

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
 (note: no costs for telephone, copying etc.)

[REDACTED]
 [REDACTED]

TOTAL INVOICE

[REDACTED]

TOTAL BALANCE DUE

[REDACTED]

FLYNN & STILLMAN
P.O. Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES

Through November 30, 2006, 2006
Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No 007

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES [REDACTED]
TOTAL COSTS ADVANCED [REDACTED]
(note: no costs for telephone, copying etc.)

TOTAL INVOICE [REDACTED]

TOTAL BALANCE DUE [REDACTED]

ATTORNEY TIME RECORD

RE:	Montgomery vs. eTreppid Technologies		
DATE	DESCRIPTION	ATTY	TIME
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

EXHIBIT "C"

1 Michael J. Flynn, Mass. State Bar No.172780

P.O. Box 690, 6125 El Tordo

2 Rancho Santa Fe, CA 92067

Tel: (858) 775-7624; Fax: (858) 759-0711

3 *Admitted Pro Hac Vice*

Carla A. DiMare, Mass. State Bar No. 553432

4 LAW OFFICE OF CARLA DIMARE

P.O. Box 1668

5 Rancho Santa Fe, CA 92067

Tel: (858)775-0707; Fax: (858)756-2859

6 *Admitted Pro Hac Vice*

Attorneys for Plaintiff DENNIS MONTGOMERY, THE MONTGOMERY FAMILY TRUST, AND

7 THE TRUSTEES OF THE MONTGOMERY FAMILY TRUST.

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 DENNIS MONTGOMERY, and the)
11 MONTGOMERY FAMILY TRUST,)

3:06-CV-00056-PMP-VPC
BASE FILE

12 Plaintiffs,)

3:06-CV-00145-PMP-VPC

13 v.)

EX PARTE MOTION TO WITHDRAW
AS COUNSEL FOR MONTGOMERY.

14 ETREPPID TECHNOLOGIES, LLC,)
15 WARREN TREPP, and the UNITED)
STATES DEPARTMENT OF DEFENSE,)

16 Defendants.)

17 AND ALL RELATED MATTERS.)
18

19 TO ALL PARTIES AND ATTORNEY OF RECORD: Attorney Michael Flynn and Attorney
20 Carla DiMare (and the Law Office of Carla DiMare), (hereinafter "counsel"), who were admitted pro
21 hac vice in the above captioned cases, move this Court for an Order allowing them to withdraw
22 forthwith from representing Dennis Montgomery, individually and as Trustee of the Montgomery
23 Family Trust, Brenda Montgomery as Trustee of the Montgomery Family Trust, and the Montgomery
24 Family Trust (hereinafter collectively "Montgomery"), in the above captioned cases and the related
25 search warrant matter, 3:06-cv-0263. Montgomery would not consent to withdrawal, and no new
26 Montgomery attorney has contacted counsel, necessitating this ex parte motion.

27 This motion is made on the grounds that "good cause" exists for granting this motion. *See e.g.*
28 *Page v. Walser*, 46 Nev. 390 (1923)[attorney can withdraw for good cause]. Counsel has always fully
and diligently performed the services for which they were retained, as the record and pleadings clearly

1 reflect. Montgomery "has breached an obligation for the payment of fees," and "has engaged in
2 conduct that has made continued representation unreasonably difficult" (Attorney Declarations, filed
3 herewith). The best interest of justice and these cases will be served by allowing withdrawal forthwith
4 and GRANTING this motion.

5 Notice has been given as required by law. Montgomery has been served with a copy of all
6 moving papers related to this withdrawal motion via e-mail at his current e-mail address and U.S.
7 mail. (See Atty. Declarations, filed herewith; Certificate of Service). Also, he is still represented by
8 and in communication with local counsel, Logar & Pulver, which has been served with these moving
9 papers, along with all other parties who have appeared in these cases. (Certificate of Service).

10 Nevada Supreme Court Rule 173 states in pertinent part that "... a member of the state bar,
11 ... may withdraw at any time with the consent of the client but if the consent of the client cannot be
12 obtained then he should obtain the approval of the court for his withdrawal." Counsel gave written
13 notice to Montgomery of a Notice of Intent to Withdraw, which gave Montgomery reasonable time
14 to find substitute counsel. However, in response to that said Notice, Montgomery said he would not
15 consent to withdrawal. If Montgomery claims he needs additional time to engage substitute
16 attorney(s), this Court should not require counsel to remain in the case without full payment made by
17 Montgomery forthwith to counsel. Alternatively, if Montgomery claims he needs more time to engage
18 substitute attorneys, this Court should GRANT this motion and grant Montgomery additional time to
19 engage replacement counsel, if any.

20 Counsel has taken "reasonable steps to avoid reasonably foreseeable prejudice" to Montgomery.
21 See A.B.A. Rule 2.110 A-2 ["In any event, a lawyer should not withdraw ... until he has taken
22 reasonable steps to avoid foreseeable prejudice to the rights of his client, allowing time for employment
23 of other counsel, delivering to the client all papers and property to which the client is entitled, and
24 complying with the applicable laws and rules."] Again, counsel gave written notice to Montgomery
25 of a Notice of Intent to Withdraw, which gave Montgomery reasonable time to engage substitute
26 attorney(s). Counsel also communicated both orally and in writing to local counsel that they would
27 help in a smooth transition, and, in fact, has already begun to deliver Montgomerys' papers and
28 property in these cases. As the Court may know, Montgomery has had two local counsel in Reno,

CERTIFICATE OF SERVICE

I, Carla A. DiMare, declare: I am an attorney admitted pro hac vice in the United States District Court of Reno in the related civil cases, U.S.D. Reno, No. 3:06-CV-00056 and 3:06-CV-000145. I am over the age of 18 years and not a party to this action.

I am familiar with the practice for the collection of mail, delivery of hand-deliveries, process of facsimile, and the practice of mailing.

On July ____, 2007, I caused the foregoing document (Ex Parte Motion to Withdraw, and this Certificate of Service), to be mailed to the following persons and/or entities:

Attorneys Stephen Peek & Jerry Snyder
HALE LANE
5441 Kietzke Lane, 2nd Fl.
Reno, NV 89511

Attorney Carlotta P. Wells,
U.S. DEPT. OF JUSTICE
P.O. Box 883
Washington, D.C. 20044

Dennis Montgomery
Montgomery Family Trust
Opspring, LLC
600 106th Ave. N.E., No. 210
Bellevue, WA 98004-5043
(Also sent via e-mail)

Ronald J. Logar, Esq.
Eric Pulver, Esq.
LAW OFFICE OF LOGAR & PULVER, PC
225 S. Arlington Ave., Ste. A
Reno, NV 89501
(Also sent via e-mail)

/S/

Attorney Carla DiMare

EXHIBIT "D"

Aug 01 07 04:50p

p. 1

Office of Dennis and Brenda Montgomery and Montgomery Family Trust

August 1, 2007

Via PDF [mjfbb@msn.com and edimare@worldnet.att.net]
and Facsimile (858) 759-0711, (888) 235-4279 and (858) 756-2859

Michael J. Flynn, Esq.
Flynn & Stillman
224 Birmingham Drive, Ste. 1A4
Cardiff, California 92007-1743

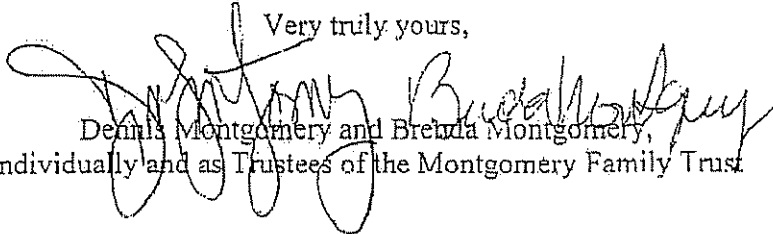
PO Box 690
6125 El Tordo
Rancho Santa Fe, California 92067

Carla A. DiMare, Esq.
Law Office of Carla Dimare
P.O. Box 1668
Rancho Santa Fe, California 92067

Dear Michael and Carla:

Please allow this letter to serve as formal notice that we are hereby terminating your representation of us in all matters, effective immediately. Please do no further work in connection with any matter in which you have represented us, and file no further documents with any Court or make any representations to any third party on our behalf. Please also immediately return to us any and all files, papers, records and other things in your possession relating to your representation of us in connection with any matter.

Very truly yours,


Dennis Montgomery and Brenda Montgomery,
Individually and as Trustees of the Montgomery Family Trust

DECLARATION

DECLARATION OF TERI T. PHAM

I, Teri t. Pham, declare as follows:

1. I am an attorney licensed to practice in the State of California and admitted *pro hac vice* to appear before this Court. I am a partner with the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, counsel of record for Dennis Montgomery, Brenda Montgomery, and The Montgomery Family Trust ("the Montgomery Parties") in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached to this Declaration as Exhibit A are true and correct copies of information I printed from the State Bar of California website showing that attorneys Carla Di Mare, Al Rava and Philip Stillman, who also appear on the Flynn & Stillman invoices, are all licensed to practice in the State of California, with addresses in California.

3. Attached to this Declaration as Exhibit B is a true and correct copy of the District Court for the District of Nevada's ("Nevada Court") Order granting attorneys Michael J. Flynn's and Carla Di Mare's motion to withdraw as counsel.

4. Attached to this Declaration as Exhibit C is a true and correct copy of the Montgomery Parties' Response To Michael J. Flynn's Unauthorized Sur-Reply And Supplemental Declaration In Support Of Motion To Withdraw.

5. On September 11, 2007, the Nevada Court issued an Order requiring the parties to comply with Federal Rule of Civil Procedure 16 and Nevada Local Rule 16-2, which among other things, requires the parties to meet and confer and submit a detailed discovery plan and scheduling

///

///

///

1 order. A true and correct copy of the Nevada Court's September 11, 2007 Order is attached to this
2 Declaration as Exhibit D..

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed this ^{18th} day of September, 2007, in Los Angeles, California.

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Teri T. Pham

EXHIBIT "A"

ATTORNEY SEARCH

Carla A DiMare - #182906

Current Status: Active

This member is active and may practice law in California

See below for more details

Profile Information

Bar Number	182906	Phone Number	(858) 775-0707
Address	P O Box 1668 Rancho Santa Fe, CA 92067-1668	Fax Number	(858) 756-2859
		e-mail	Not Available
District	District 9	Undergraduate School	Boston Coll; Chestnut Hill I
County	San Diego	Law School	New England SOL; Boston
Sections	None		

Status History

Effective Date	Status Change
Present	Active
6/10/1996	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline

Administrative Actions

This member has no public record of administrative actions

Start New Search >

ATTORNEY SEARCH

Alfred Gerard Rava - #188318

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

Bar Number	188318	Phone Number	(619) 238-1993
Address	The Rava Law Firm 3667 Voltaire St San Diego, CA 92106	Fax Number	(619) 374-7288
		e-mail	alrava@cox.net
District	District 9	Undergraduate School	Penn State Univ; Universit
County	San Diego	Law School	California Western SOL; S
Sections	None		

Status History

Effective Date	Status Change
Present	Active
6/5/1997	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline

Administrative Actions

This member has no public record of administrative actions

[Start New Search >](#)

ATTORNEY SEARCH

Philip Harris Stillman - #152861

Current Status: Active

This member is active and may practice law in California

See below for more details.

Profile Information

Bar Number	152861	Phone Number	(888) 235-4279
Address	Flynn & Stillman 224 Birmingham Dr Ste 1A4 Cardiff, CA 92007-1743	Fax Number	(888) 235-4279
		e-mail	Not Available
District	District 9	Undergraduate School	Brandeis Univ; Waltham M
County	San Diego	Law School	Boston Univ SOL; Boston I
Sections	Litigation		

Status History

Effective Date	Status Change
Present	Active
6/13/1991	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline.

Administrative Actions

This member has no public record of administrative actions.

Start New Search >

EXHIBIT "B"

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 * * *

5 DENNIS MONTGOMERY and the)
6 MONTGOMERY FAMILY TRUST)

7 Plaintiffs,)

8 vs.)

9 ETREPPID TECHNOLOGIES, LLC;)
10 WARREN TREPP; and the UNITED)
11 STATES DEPARTMENT OF DEFENSE,)

12 Defendants.)

13 AND ALL RELATED MATTERS.)

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

ORDER

14 Michael J. Flynn, Esq., and Carla DiMare, Esq., have served as lead counsel for
15 Plaintiffs Dennis Montgomery and the Montgomery Family Trust since the these
16 consolidated proceedings commenced. They now seek to withdraw as counsel for Plaintiffs
17 pursuant to a motion filed July 9, 2007, (Doc. #204, #205, and #206).

18 Defendant United States does not oppose Flynn and DiMare's motion to
19 withdraw as counsel, but because the Court has upheld the United States' assertions of the
20 military and state secrets privilege with respect to a variety of pleadings, motions,
21 declarations and other materials filed herein, Defendant United States seek to condition
22 counsel's withdrawal on the following four conditions:

23 1) all counsel (i.e., Michael J. Flynn, Carla DiMare,
24 Ronald J. Logar, and Eric A. Pulver) have complied
25 with their obligations to protect information subject to
the military and the state secrets privilege as upheld by
the Court in the instant actions;

26 ///

1 2) all counsel certify that they have not transmitted any
2 information covered by the military and state secrets
3 privilege to new counsel for Dennis Montgomery or to
4 any other person;

5 3) all counsel have either produced to the United States
6 or, after consultation with United States Department of
7 Justice Security and Emergency Planning Staff (SEPS),
8 certified that they have properly destroyed all information,
9 either in hard copy or electronic format, in their possession
10 that is protected by the military and state secrets privilege; and

11 4) the United States either has confirmed that all counsel for
12 Montgomery have produced such documents to the United
13 States or determined that counsel for Montgomery's
14 certification that information protected by the military and
15 state secrets privilege in any documents in either hard or
16 electronic format in counsel for Montgomery's possession
17 has been destroyed is sufficiently detailed.(Doc. #259)

18 Plaintiffs Dennis Montgomery and the Montgomery Family Trust, through local
19 counsel Ronald Logar, Esq., and Eric Pulver, Esq., who also have represented Plaintiffs in
20 conjunction with Flynn and DiMare throughout most of this litigation, state in their Reply
21 (Doc. #213) that they do not oppose Flynn and DiMare's motion to withdraw. Indeed,
22 Plaintiffs state that they have retained new lead counsel of record, to wit: the law firm of
23 Liner Yankelevitz Sunshine & Regenstreif, LLP who are prepared to substitute into this
24 case on Plaintiffs' behalf so long as the Flynn and DiMare turn over Plaintiffs' complete
25 client file.

26 Flynn and DiMare reply that the four conditions Defendant United States
proposes are more properly directed to new counsel of record for the Montgomery
Plaintiffs. Nonetheless, to the extent the conditions Defendant United States proposes are
directed at them, Flynn and DiMare state that they will comply with their obligations to
protect information subject to the military state secrets privilege as upheld by this Court in
its April 2, 2007 Order (Doc. #147), and any subsequent Orders this Court may enter
pertaining to the United States' claim of and military state secrets privilege. Flynn and
DiMare further state with respect to proposed condition number two, that they have not to

1 date knowingly turned over to any other person any documents in violation of this Court's
2 April 2, 2007 Order. Preconditions three and four, however, draw the objection of Flynn
3 and DiMare as improper and unenforceable.

4 Specifically, Flynn and DiMare state that they cannot agree to provide to the
5 Defendant United States Department of Justice Security in Emergency Planning Staff any of
6 Plaintiffs' client files absent an Order of this Court. Flynn and DiMare insist that the
7 attorney-client privilege permeates Plaintiffs' client files and to surrender them to
8 Defendant United States for review would violate their attorney client obligations to the
9 Montgomery Plaintiffs (Doc. #210).

10 Flynn and DiMare object to the argument advanced on Plaintiffs' behalf by local
11 counsel Logar and Pulver (Doc. #213), that new lead counsel of record cannot substitute into
12 the case until they obtain Plaintiffs' entire file from Flynn and DiMare. Flynn and DiMare
13 argue that because they have not yet been "terminated" as counsel for the Montgomery
14 Plaintiffs and the law firm of Liner Yankelevitz Sunshine & Regenstreif, LLP has not yet
15 entered an appearance on behalf of the Montgomery Plaintiffs, they are not obligated to turn
16 any files over to new counsel for the Montgomery Plaintiffs.¹ Additionally, Flynn and
17 DiMare argue that Nevada Rule of Professional Conduct 1.16(d) affords them a "retaining
18 lien" over the Montgomery Plaintiffs' client files and that until the Montgomery Plaintiffs
19 pay any outstanding fees and costs due Flynn and DiMare, withdrawing counsel are not
20 obligated to surrender the client files to new counsel (Doc. #214, #215 and #216).

21 ///

22 ///

23 ///

24
25 ¹ On August 1, 2007, the Montgomery Plaintiffs, through local counsel Logar and
26 Pulver, filed a Notice of Termination of Flynn and DiMare as counsel for Plaintiffs
(Doc. #227). Additionally, the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP
recently has entered an appearance on behalf of the Montgomery Plaintiffs.

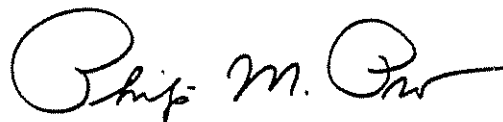
1 On August 17, 2007, the Court conducted a hearing regarding the Flynn and
2 DiMare motion to withdraw as counsel for the Montgomery Plaintiffs (Doc. #204 #205, and
3 #206). Having considering counsel's arguments as well as all supplemental filings made by
4 the parties since the hearing conducted August 17, 2007, the Court finds that Flynn and
5 DiMare's motion of to withdraw (Doc. #204, #205 and #206) should be granted subject to
6 conditions one and two set forth in Defendant United States' Response (Doc. #209) filed July
7 16, 2007.

8 IT IS SO ORDERED.

9 IT IS FURTHER ORDERED that proposed conditions three and four by
10 Defendant United States as conditions to the withdrawal of Flynn and DiMare as counsel
11 for the Montgomery Plaintiffs are rejected.

12 IT IS FURTHER ORDERED that to the extent the Montgomery Plaintiffs seek to
13 condition the withdrawal of Flynn and DiMare on Flynn and DiMare surrendering their
14 complete "client file" to new counsel of record for Plaintiffs (Doc. #213), said precondition
15 is rejected by the Court. In this regard, the record before the Court does not support a
16 finding that Flynn and DiMare have withdrawn "voluntary" as counsel for Montgomery
17 Plaintiffs, In the Matter of Kaufman 93 Nev. 452, 567 P.2d 957 (1977), nor does it appear
18 on the record before the Court that Flynn and DiMare should be compelled to surrender
19 their files to new counsel of record. Figliuzzi v. Fed. Dist Court. 111 Nev. 338, 890 P.2d
20 798 (1995).

21
22 DATED: September 4, 2007.

23
24 

25 PHILIP M. PRO
26 United States District Judge

EXHIBIT "C"

1 Ronald S. Logar, Esq. (SBN: 00303)
 Eric A. Pulver, Esq. (SBN: 07874)
 2 LAW OFFICE OF LOGAR & PULVER, PC
 225 S. Arlington Avenue
 3 Suite A
 Reno, Nevada 89501
 4 Telephone: (775) 786-5040
 Facsimile: (775) 786-7544

5 Deborah A. Klar, Esq. (SBN: 124750)
 6 Teri T. Pham, Esq. (SBN: 193383)
 Ryan M. Lapine, Esq. (SBN: 239316)
 7 LINER YANKELEVITZ
 SUNSHINE & REGENSTREIF LLP
 8 1100 Glendon Avenue, 14th Floor
 Los Angeles, California 90024-3503
 9 Telephone: (310) 500-3500
 Facsimile: (310) 500-3501

10
 11 Attorneys for Plaintiffs
 Dennis Montgomery and the Montgomery Family Trust

12
 13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF NEVADA**

16 DENNIS MONTGOMERY, an individual; and)	Case No. 3:06-CV-00056-PMP-VPC
17 MONTGOMERY FAMILY TRUST, a California)	BASE FILE
18 Trust,)	
19 Plaintiffs,)	3:06-CV-00145-PMP-VPC
20 vs.)	
21 eTREPPID TECHNOLOGIES, LLC, a Nevada)	RESPONSE TO MICHAEL J. FLYNN'S
Limited Company; WARREN TREPP, an)	UNAUTHORIZED SUR-REPLY AND
22 individual; and DOES 1 through 10,)	SUPPLEMENTAL DECLARATION IN
23 Defendants.)	SUPPORT OF MOTION TO
24)	WITHDRAW
25)	
26)	
27)	
28)	

26 Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust ("the
 27 Montgomerys") respectfully submit this brief response for the purpose of objecting to the
 28 unauthorized sur-reply and supplemental declaration filed by Michael J. Flynn in these

1 consolidated matters. Mr. Flynn has been terminated as counsel of record in this matter and new
2 counsel for the Montgomerys have appeared. To the extent there are any orders and rulings in
3 place governing the conduct of counsel or the parties in these actions, new counsel will continue to
4 be bound by those orders and rulings. Mr. Flynn accordingly lacks standing to assert any claims or
5 issues in these matters. As Mr. Flynn acknowledges in his recent supplemental declaration, there is
6 presently an action pending in the United States District Court for the Central District of California
7 addressing any issues concerning the attorney-client relationship between Mr. Flynn and the
8 Montgomerys. There is no pending case or controversy between Mr. Flynn and the Montgomerys
9 before this Court, and the Montgomerys respectfully request that the Court confirm Mr. Flynn's
10 termination and disregard any extraneous issues not properly before this Court.

11 Dated: August 16, 2007

Respectfully submitted,

12 LINER YANKELEVITZ
13 SUNSHINE & REGENSTREIF LLP


14 By: 
15 Deborah A. Klar
16 Teri T. Pham
17 Attorneys for Plaintiffs
18 Dennis Montgomery and the Montgomery
19 Family Trust
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EXHIBIT "D"

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY, et al.,)	3:06-CV-0056-PMP (VPC)
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
)	
vs.)	September 11, 2007
)	
eTREPPID TECHNOLOGIES, LLC, et al.,)	
)	
Defendants.)	
)	

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: LISA MANN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Pursuant to Fed R.Civ.P. 16 and Local Rule ("LR") 16-2, a case management conference shall be set before United States Magistrate Judge Valerie P. Cooke as the court concludes that a Rule 16 case management conference will assist the parties, counsel, and the court. Counsel for the parties shall contact the Courtroom Administrator, Lisa Mann (775-686-5653), no later than Monday, September 17, 2007, to schedule the case management conference to be held within thirty days of this order.

In preparation for this case management conference, it is hereby ordered as follows:

A. Case Management Report

The parties shall submit a proposed stipulated discovery plan and scheduling order (#19) to include the following information in separately numbered paragraphs:

1. A short statement of the nature of the case (three pages or less), including a description of each claim and defense;
2. A description of the principal factual and legal disputes in the case;

3. The jurisdictional bases for the case, citing specific jurisdictional statutes;¹
4. Any parties who have not been served and an explanation why they have not been served; and any parties which have been served but have not answered or otherwise appeared;
5. A statement whether any party expects to add additional parties to the case or otherwise amend the pleadings (the court will set a deadline to join parties or amend pleadings at the case management conference);
6. A list of contemplated motions and a statement of issues to be decided by these motions;
7. Whether there are any pending motions that may affect the parties' abilities to comply with a case management order, including a brief description of those motions;
8. The status of related cases pending before other courts or other judges of this court;
9. Any further supplemental discussion of necessary discovery (in addition to the discussion contained in docket #19), including:
 - a. The extent, nature, and location of discovery anticipated by the parties;
 - b. Suggested revisions, if any, to the discovery limitations imposed by the Federal Rules of Civil Procedure and LR 26(1)(e);
 - c. The number of hours permitted for each deposition, unless extended by the parties.
10. A discussion of any issues relating to the disclosure or discovery of electronically stored information ("ESI"), including the form or forms in which it should be produced (*see* Rules 16(b)(5), 26(f)(3));
11. A discussion of any issues related to claims of privilege or work product (*see* Rules 16(b)(6), 26(f)(4));
12. The court will consider the parties' proposed dates for each of the following:

¹If jurisdiction is based on diversity, the basis shall include a statement of the citizenship of every party and the amount in dispute. *See e.g.* U.S.C. § 1332. The parties are reminded that (1) a corporation is a citizen of the state where it is incorporated and the state of its principal place of business and (2) partnerships and limited liability companies are citizens of every state in which one of their members or partners resides. *See* 28 U.S.C. § 1332(c); *Indus. Tectonics v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 692 (7th Cir. 2003).

- a. A deadline for the completion of fact discovery;
 - b. Dates for complete disclosure of expert testimony under Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure;
 - c. A deadline for completion of all expert depositions;
 - d. A date by which the parties shall have engaged in good faith settlement talks;
- 13. Whether a jury trial has been requested and whether the request for a jury trial is contested (if the request is contested, set forth reasons);
 - 14. The estimated length of trial and any suggestions for shortening the trial;
 - 15. The prospects for settlement, including any request of the court for assistance in settlement efforts; and
 - 16. Any other matters that will aid the court and parties in resolving this case in a just, speedy, and inexpensive manner as required by Fed.R.Civ.P. 1.

The parties shall jointly file the case management report with the Clerk of Court not less than seven days before the case management conference. The case management report shall not exceed **ten (10) pages**. It is plaintiff's responsibility to initiate and prepare the joint case management report, and it is defendants' responsibility to assist in preparation of the case management report.

B. Case Management Conference and Order

The court directs counsel to Rule 16 of the Federal Rules of Civil Procedure for the objectives of the case management conference. Counsel who appear at the case management conference shall have authority to enter into stipulations regarding all matters that may be discussed. Out-of-state counsel may appear telephonically.

C. Other Matters

_____ Counsel for all parties are expected to comply fully with the Federal Rules of Civil Procedure and this court's Local Rules to minimize the expense of discovery.

The Clerk of Court shall serve copies of this order to all counsel of record and to any parties appearing *in propria persona*.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: /s/ _____
Deputy Clerk

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1100 Glendon Avenue, Fourteenth Floor, Los Angeles, California 90024-3503.

On September 18, 2007, I served the within document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OR APPLICATION FOR WRIT OF POSSESSION; DECLARATIONS OF DENNIS MONTGOMERY AND TERI T. PHAM** on the interested party in this action as stated below:

Michael J. Flynn, Esq.
Post Office Box 690
6125 El Tordo
Rancho Santa Fe, California 92067
(858) 759-7000 and (858) 775-7624
(858) 759-0711 - FAX
E-mail: mjfb@msn.com

☒ **[BY MAIL]** By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.

☐ **[BY FACSIMILE]** By transmitting a true copy of the foregoing document(s) via facsimile transmission from this firm's facsimile machine, to the interested party at the facsimile machine telephone number(s) set forth above. Said transmission(s) were completed on the aforesaid date at the time stated on the transmission record issued by this firm's sending facsimile machine. Each such transmission was reported as complete and without error and a transmission report was properly issued by this firm's sending facsimile machine for the interested party served. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

☐ **[BY E-MAIL]** By transmitting a true copy of the foregoing document(s) to the e-mail address set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 18, 2007, at Los Angeles, California.


NANCY TORRECILLAS

PROOF OF SERVICE